

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Grant Boyd

v.

CA: 05-10873-RWZ

Mike Austin, et al

PLAINTIFFS COMBINED AMENDED COMPLAINT, MOTION TO ADD DEFENDANT
AND MEMORANDUM IN SUPPORT

I. Amended Complaint

- a) The Court has jurisdiction over this issue pursuant to 28 USC §§ 1346, 1331. Also see Carlson v. Green 446 US 14, 18 (1980)(prisoners may seek remedies for violations of constitutional rights in the absence of affirmative Congressional action); Bivens v. Six Unknown Federal Agents 403 US 388 (1971)(individual entitled to sue federal agents for monetary damages) c.f. 34 Geo.L.J. Ann.Rev.Crim.Proc 960, n.2967 (2005).
- b) On June 27, 2005 (6/27) Nancy Rue while acting in her official and individual capacity, under color of state authorized a retaliatory transfer of Grant Boyd in connection with this case and the 6/27 USMS Motion to dismiss, served upon Boyd's return.
- c) Nancy Rue's actions were not related to any legitimate governmental purpose or to Boyd's criminal prosecution, but done to retaliate against Boyd for litigating against the USMS and was intended to intimidate Boyd into allowing the 6/27 USMS motion to dismiss to go unopposed. Wherefore plaintiff demands judgement against Nancy Rue of the kind and in the amount the Court finds appropriate.

II. Arguement for Adding Nancy Rue

Based on new evidence, plaintiff moves the Court to add Nancy Rue as a defendant in her official and individual capacities for acting under color of state when she authorized actions against plaintiff intended to intimidate and retaliate against him for exercising his First Amendment rights in this case.

Plaintiff alleges that a nexus exists between the 6/27 arbitrary transfer to US Courthouse authorized by Nancy Rue and the 6/27 USMS motion to dismiss served on the plaintiff upon his return, by the US Attorney's Office (USAO). (see Exhibit A, plaintiff's opposition to USMS motion to dismiss, pg 9, filed on 8/10/05).

As noted in Exhibit A, plaintiff and plaintiff's criminal attorney were unable to explain why plaintiff would have been transferred on 6/27. There was no hearing scheduled in Boyd's criminal case 05-10037-GAO, no meetings or any other legitimate independent reason for this action.

As noted in Exhibit A, plaintiff concluded that this action was intended to intimidate the plaintiff into withdrawing his claim against the USMS by reminding the plaintiff that the USMS has control over what happens to him. It was clear that this action was a retaliatory act against the plaintiff for litigating against the USMS. Plaintiff understandably feared for his safety while wondering what the USMS would do next. The nexus or connection between the 6/27 transfer and the 6/27 motion to dismiss was very clear to the plaintiff and troubling.

Boyd argues that this connection is sufficient to sustain a claim of retaliation. see Morales v. Mackalm 278 F.3d 126 (2nd Cir 2002)(plaintiff must show a casual connection between protected speech right and adverse action). To plea adverse action plaintiff must allege that the defendant subjected him to conduct that would deter a similar individual of ordinary firmness from exercising his Constitutional rights. Bart v. Telford 667 F.2d 622, 625 (7th Cir); Allah v. Seiverling 229 F.3d 220 (3rd Cir 2000); Crawford-El v. Britton 951 F.2d at 826.

The plaintiff argues that any sane man, upon learning that his captors and prosecutor were retaliating against him, would be deterred from continuing the litigation. Plaintiff's lawyers had advised him to stop the litigation for fear of backlash. In light of the new evidence, showing Nancy Rue's involvement in this retaliation, the implications of his lawyer's advice have now become clear to the plaintiff.

It is shocking to learn that Boyd's prosecutor, AUSA Nancy Rue, was the one who authorized the retaliation and intimidation. As Boyd's prosecutor she should have **nothing** to do with his civil action against the USMS and the mere appearance of involvement in any retaliatory act related to this civil action should be unacceptable.

On November 3, 2006, plaintiff received the requested USMS discovery materials (Exhibit B) and had learned for the first time ~~that~~ ^{that} it was Nancy Rue who authorized the transfer on 6/27. She was not acting in her capacity as Boyd's prosecutor and

her action was in no way related to Boyd's prosecution. She was involved in retaliating against Boyd for exercising his Constitutional right which is in violation of clearly established laws, as such she lost any immunity from litigation and liability.

II(a). Immunity Issues

The official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question, namely authorizing a transfer. Buckley v. Fitzsimmons 509 US 259, 269 (1993). The Supreme Court held that a Court must look at the nature of the function performed, not the identity of the actor who performed it. *Id* at 269.

Nancy Rue's action did not relate to her preparation for the initiation of Boyd's prosecution or to a judicial proceeding and as such are not entitled to absolute immunity. *Id* at 273; Also see Kalina v. Fletcher 522 US 118, 126 (1997)(prosecutor not absolutely immune with respect to actions outside of trial), c.f. 34 Geo.L.J. Ann. Rev. Crim. Proc. 979, n.3032 (2005).

When Nancy Rue authorized Boyd's transfer she was acting as an administrator and not as a Court Officer. "When a prosecutor functions as an administrator rather than an officer of the Court, he is entitled to only qualified immunity." *Buckley* at 273. See also Brown v. Lyford 243 F.3d 185, 191 (5th Cir 2001) (prosecutor not absolutely immune, but rather entitled to qualified immunity).

Nancy Rue's actions violated clearly established Constitutional rights, were not related to a judicial proceeding in Boyd's case and as such she has no immunity.

III. Conclusion

III. Conclusion

As Boyd's prosecutor, Nancy Rue should never have been involved in Boyd's Civil Action against the USMS. When Boyd first filed against the USMS, he never knew the USAO would be representing the USMS and upon learning thi fact, he had hoped his criminal prosecution would not be tainted by his action. To find out last week, 17 months after the 6/27 transfer that it was Nancy Rue who authorized the retaliation and intimidation against him is very troubling and worrysome.

Outside of any professional ethics violations and the possibility of the appearance of prosecutorial vindictiveness, AUSA Nancy Rue violated Boyd's First Amendment Constitutional right to seek judicial redress for conditions of confinement issues. An Officer of the Court, who took an oath to obey the Constitution, should not be violating it.

Boyd has established a nexus between the adverse action authorized by Nancy Rue and the exercise of his protected speech right, her actions would deter any sane individual of ordinary firmness from exercising his Constitutional rights. Because her action was administrative in nature and violated clearly established Constitutional rights she has NO absolute or quilified immunity.

Plaintiff has met his burden and can sustain a claim against Nancy Rue for violating Boyd's Constitutional rights. She chose to get involved with this civil litigation and carry-on the Government's retaliation, it is legally reasonable that she should be a defendant in this case.

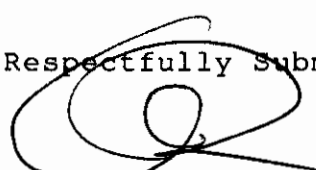
Boyd is being prosecuted by the USAO who is represented by Nancy Rue, any conflict between this proposed civil action against Nancy Rue and Boyd's prosecution by Nancy Rue should be addressed by the USAO and should not be taken into consideration by this Court. As discussed in the scheduling conference with the Court, plaintiff's litigation must factor a proposed sentencing date, now April 2007, if the Court does not allow this motion the plaintiff will be out of the jurisdiction by the time a new case against Nancy Rue could be filed. If Boyd is out of the jurisdiction then he will be bared from litigation.

It was Nancy Rue's decision to get involved and to retaliate against the plaintiff that involved her in this civil action, she created this conflict, not the plaintiff and the plaintiff should not be bared from seeking relief.

Her actions were illegal, vindictive and rise to the level of misconduct. She abused her office and her authority when she retaliated against the plaintiff and as such lost any immunity. It is for all of the above reasons that the plaintiff pleads with the Court to grant this motion to add Nancy Rue as a defendant.

Plaintiff also asks the Court to construe his pro-se submission liberally and to interpret it to raise the strongest argument ~~is~~^{it} suggests. see Wright v. Comm. 381 F.3d 41, 44 (2nd Cir 2004) c.f. 34 Geo.L.J.Rev.Crim.Proc. 988 at n.3050 (2005).

Respectfully Submitted,


Grant Boyd, Pro-Se
PO Box 100
S. Walpole, MA 02071

11/7/06

within the USMS that might help establish a pattern of deliberate indifference to the conditions at 3rd party locations and violations of inmate rights that occur at local jails.

Additionally, on June 27, 2005 the Plaintiff was transported by the DOC to the US Federal Court at the request of the USMS. When Plaintiff was returned to Walpole he was served with the USMS Motion to Dismiss. Plaintiff contacted his lawyer and found out that he was not scheduled for any appearances or meetings that would explain this transportation to US Federal Court other than an attempt by the USMS to encourage Plaintiff to drop them from the action. This goes to a showing of relative retaliatory conduct and to the existence of an agency policy or custom, even an informal one, that makes it acceptable to punish detainees for exercising a First Amendment Right to seek judicial oversight. ★

Plaintiff begs the court to see this conduct for what it is, an attempt to intimidate and harass a victim and make him fearful of seeking oversight for repetitive violations. Plaintiff is truly fearful of what will occur if he continues this lawsuit while in the custody of the USMS.

Plaintiff contends he has established a casual connection between a protected First Amendment right and an adverse action related to the retaliatory actions taken by the Defendants. As such Plaintiff submits that this claim survives the motion to dismiss.

CONCLUSION

Plaintiff asks the court to deny the Defendants USMS' motion to dismiss for all of the above reasons.

Exhibit

A



U.S. Department of Justice

Michael J. Sullivan
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

November 2, 2006

Grant Boyd
MCI Cedar Junction
P.O. Box 100
South Walpole, MA 02071

Re: Boyd v. Austin, C.A. 05-10873

Dear Mr. Boyd:

In response to your 10/25/06 request for documents, a copy of which is enclosed, please find herein all responsive documents which I have obtained from the U.S. Marshals Service. I hope this concludes our involvement in this litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugenia M. Carris".

Eugenia M. Carris
Assistant United States Attorney

Enclosures

Exhibit
B
(2 Pages)

USM-129 Prisoner Update

Office: 00

Prisoner Schedule

Office: 00

Schedule Type
COURT

Last Changed By
01/03/2005 erose

Schedule Date	USMS No.	Last Name	First Name	S e Cur	USM Loc	Time	II Destination
01/03/2005	04725082	BOYD	GRANT	M	1ET	14:00	IA COHEN
01/04/2005	04725082	BOYD	GRANT	M	1ET	09:00	MA PROFFER
01/05/2005	04725082	BOYD	GRANT	M	1ET	10:00	MA PROFFER - RUE X3
01/07/2005	04725082	BOYD	GRANT	M	1ET	12:00	MA PROFFER - RUE X3
01/12/2005	04725082	BOYD	GRANT	M	1ET	14:00	DH COHEN
01/12/2005	04725082	BOYD	GRANT	M	1ET	15:00	IA DEIN
01/19/2005	04725082	BOYD	GRANT	M	1ET	10:00	MA PROFFER - RUE X3
01/20/2005	04725082	BOYD	GRANT	M	1ET	10:00	MA PROFFER - RUE X3
01/20/2005	04725082	BOYD	GRANT	M	1ET	15:00	DH COHEN
03/17/2005	04725082	BOYD	GRANT	M	1ET	14:30	AR ALEXANDER
03/22/2005	04725082	BOYD	GRANT	M	1ET	09:00	TF TO WALPOLE
05/18/2005	04725082	BOYD	GRANT	M	1ET	13:30	MA CANCELLED
06/27/2005	04725082	BOYD	GRANT	M	1ET	09:30	MA 3260 RUE ★
07/12/2005	04725082	BOYD	GRANT	M	1ET	10:00	MA 3260 RUE
09/14/2005	04725082	BOYD	GRANT	M	1ET	14:00	MH SOROKIN
11/10/2005	04725082	BOYD	GRANT	M	1ET	09:00	MA AUSA RUE
12/09/2005	04725082	BOYD	GRANT	M	1ET	09:30	MH OTOOLE
03/30/2006	04725082	BOYD	GRANT	M	1ET	14:00	SH OTOOLE FINAL PRE
04/03/2006	04725082	BOYD	GRANT	M	1ET	11:30	AR SOROKIN
07/24/2006	04725082	BOYD	GRANT	M	1ET	11:00	AR SORKIN

Enter schedule date.

F1-Prv Form F2-Nxt Form F3-Prv Rec F4-Nxt Rec F5-Fld Help F10-More Key

Exhibit B
(Part B)

I, Grant Boyd, certify under the pain and penalty of perjury that the below list of items were mailed to the below listed individuals by postage pre-paid first class mail on 7 day of NOV month of 2006.

1. Motion to add defendant
2. NOTICE
3. _____
4. _____

Mailed to:

1. Isabel Eonas, PCSD, 24 Long Pond Rd., Plymouth, MA 02360
2. _____
3. _____

Signed under the pain and penalty of perjury.



Grant Boyd, Pro-Se

11/7/06
Date